

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GRACILIANO JOHNNY CONCEPCION PERALTA,
*on behalf of himself and all other persons similarly
situated,*

Plaintiff,

-v-

STELLAR MANAGEMENT CO. INC., *et al.*,

Defendants.

23 Civ. 9165 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:


Plaintiff filed the Complaint in this action on October 18, 2023, *see* Dkt. 1, but the docket does not reflect whether Defendants have been served. Nor has Plaintiff requested an extension of time to serve Defendants. Pursuant to Federal Rule of Civil Procedure 4(m), “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m).

Accordingly, Plaintiff is ordered to file a status letter by March 8, 2024, describing (1) whether service of the summons and Complaint has been made on Defendants, and if not, (2) why good cause exists to excuse Plaintiff’s failure to serve Defendants within the 90-day deadline set by Rule 4(m). *See* Fed. R. Civ. P. 4(m) (“[I]f the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.”). The Court reminds Plaintiff that “[t]o establish good case a plaintiff must demonstrate that despite diligent attempts, service could not be made due to exceptional circumstances beyond his or her control.” *Deptula v. Rosen*, 558 F. Supp. 3d 73, 75 (S.D.N.Y. 2021) (internal quotation marks omitted).

Plaintiff must file this letter even if service of the Summons and Complaint is or has already been made on Defendants. If Defendants have been served, Plaintiff must also file proof of service on the docket no later than March 8, 2024. If no such letter is filed, the Court may dismiss the case without further notice for failure to prosecute. *See LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001) (“[I]t is unquestioned that Rule 41(b) . . . gives the district court authority to dismiss a plaintiff’s case *sua sponte* for failure to prosecute”); *Lucas v. Miles*, 84 F.3d 532, 534-35 (2d Cir. 1996) (“Rule 41(b) of the Federal Rules of Civil Procedure authorizes the district court to dismiss an action when a plaintiff fails to comply with any order of the court.”).

SO ORDERED.

Dated: February 26, 2024
New York, New York



JOHN P. CRONAN
United States District Judge